THE PERMANENT COURT OF INTERNATIONAL JUSTICE

A WORLD tribunal for the adjudication of international disputes is at last a reality! On 30 January, 1922, the eleven judges of the Permanent Court of International Justice are scheduled to meet at The Hague, and their assembling will crown the success of a whole generation of determined effort. The ideal of such a tribunal has been stirring in the minds and hearts of men for centuries. A Frenchman, Pierre Dubois, suggested it in 1305.[1] Another Frenchman, Emeric Crucé, in *Le Nouveau Cynée* published in 1623, gave it definition and direction. And through a long succession of schemes for world organization the aspiration gathered strength and support, until in the nineteenth century it became the definite goal of statesmen and found place in the policies of their governments.

Status of Other Court Projects

The conspicuous successes in international arbitration in the latter half of the nineteenth century,[2] more particularly the Geneva arbitration of 1872, made it possible for the Hague Conference of 1899 to establish the Permanent Court of Arbitration. Since its organization in 1900, this court has proved a useful panel from which judges "of known competence in international law" could be selected by disputant states desiring to submit their differences to arbitration. When the second Hague Conference met in 1907, four tribunals had been formed from the panel and their experience was capitalized for modifying and strengthening the convention establishing the court. But opinion had moved on in the interim

[1] Dr. Vesnitch states that Article 23 of the Hague Convention for the Pacific Settlement of International Disputes follows the plan of Dubois almost textually. VESNITCH, DEUX PRECURSEURS FRANÇAIS DU PACIFISME (1911), p. 29. See also Vesnitch, "Cardinal Alberoni: An Italian Precursor of Pacifism and International Arbitration," 7 AM. JOUR. INT. L. 51.

[2] Of one hundred and thirty-six arbitrations during the nineteenth century, as listed by Professor John Bassett Moore in 14 HARV. L. REV. 182–183, only nineteen occurred before 1850.

between the two conferences, and delegates to the second conference gave their chief interest to the proposals for establishing a Court of Arbitral Justice, to exist alongside the Permanent Court of Arbitration, as a tribunal for adjudication by permanent judges as differentiated from arbitration by judges selected *ad hoc*. The American delegates took a leading rôle in the efforts to establish the Court of Arbitral Justice, and it was only the inability of the delegates at the second Hague Conference to agree upon a scheme for selecting the judges which caused the failure. The conference did recommend a plan for such a court,[3] but later efforts to have the plan adopted proved likewise fruitless.[4] Nor was the Hague Convention of 1907 for establishing an International Prize Court ever ratified by the signatory states, though resort to a system of rotation enabled an agreement to be reached on the method of selecting the judges of such a court.

When the five Central American republics met at a peace conference in Washington in 1907, they succeeded in setting up the Central American Court of Justice, which functioned very successfully during the ten years of its existence and adjudicated no less than nine cases.[5] But the work of this court may be regarded as an experiment in federalism, in view of the history of the efforts to unite the Central American peoples into a single state.

Organization of the New Court

The outbreak of war in 1914 served to increase in some quarters the appreciation of the need for an international court which would exercise more authority than the Permanent Court of Arbitration. The appreciation grew, also, with the progress of the war,[6] and when the Paris Peace Conference assembled in January, 1919, it was generally taken for granted that some attempt would

[3] The plan was promulgated as an annex to the first *voeu* of the 1907 Conference, the text of which is given in Scott, Hague Conventions and Declarations of 1899 and 1907, p. 31.

[4] On 18 October, 1909, Secretary Knox proposed that the International Prize Court should also be utilized as the Court of Arbitral Justice. 4 Am. Jour. Int. L., Supp., p. 102. See also Scott, An International Court of Justice (1916).

[5] A list of the matters which came before this court is contained in "The New Pan-Americanism," World Peace Foundation (pamphlet series), Vol. VII, p. xiii.

[6] See, for instance, Reports of the New York State Bar Association, 1915, p. 76; 1917, p. 104; 1918, p. 90.

be made to establish such a world court. But when the consideration of definite proposals for a league of nations was begun, the Italian delegates were the only ones to present any precise plans for an international court, and their suggestions followed very closely the Hague conventions.[7] All drafts of the Covenant discussed in the Commission on the League of Nations contained a general provision recognizing the necessity for an international court but leaving its precise nature to future determination.[8] The first published draft seemed to envisage the international court as an arbitration tribunal.[9] But Article 14 of the final Covenant directed the Council of the League of Nations to formulate plans for a court which would be "competent to hear and determine any dispute of an international character which the parties thereto submit to it," and which might "give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly" of the League of Nations.

Soon after the Treaty of Versailles came into force, the Council of the League of Nations invited a Committee of Jurists to draw up plans for such a court.[10] When this Committee met at The

---

[7] The Italian suggestion is reprinted in a volume of DOCUMENTS PRESENTED TO THE COMMITTEE OF JURISTS AT THE HAGUE IN 1920, p. 55. This is one of three volumes dealing with the Permanent Court of International Justice, published by the League of Nations Secretariat, in 1921.

[8] President Wilson's earlier drafts provided for arbitration, but did not expressly refer to an international court. See SENATE HEARINGS ON THE TREATY OF PEACE WITH GERMANY, 66 Cong., 1 Sess., Document 106, pp. 256, 1167, 1172, 1216, and 1222. But the draft which he submitted to the League of Nations Commission on 3 February, 1919, referred to it expressly. *Ibid.*, p. 1228.

[9] Article 14 of the draft published by the Preliminary Peace Conference on 14 February, 1919, reads:

> "The Executive Council shall formulate plans for the establishment of a Permanent Court of International Justice and this Court shall, when established, be competent to hear and determine any matter which the parties recognize as suitable for submission to it for arbitration under the foregoing article." — *Preliminary Peace Conference, Protocol No. 3, Annex A.*

[10] The Treaty of Versailles came into force as between certain of the signatories on 10 January, 1920. The Council's first session in Paris, 16 January, 1920, was largely formal. At the second session in London, 13 February, 1920, a brilliant report on the court was presented by M. Leon Bourgeois, who had been chairman of the third commission in the Hague Conference of 1899 and of the first commission in the Hague Conference of 1907. See LEAGUE OF NATIONS OFF. JOUR., March, 1920, pp. 33–37.

Hague,[11] numerous suggestions were laid before it, some of which represented the results of the work begun by neutral European governments before the end of the war.[12] After five weeks of deliberation,[13] a draft scheme was prepared and presented to the Council as the result of the Committee's labors. It was studied by the Council at two different sessions,[14] and several modifications were introduced into a revised draft which the Council submitted to the Assembly of the League of Nations. In the Assembly the Council's draft was referred to a committee on which all the members of the League — forty-two at that time — were represented. This committee entrusted a sub-committee of jurists[15] with the preliminary study of the scheme, and after prolonged discussions a number of amendments were agreed upon in both the sub-committee and the committee.[16] Thus amended, the plenary Assembly finally adopted the scheme with but one additional amendment.[17]

As it was unanimously approved by a resolution of the Assembly on 13 December, 1920, the statute of the court was "adjoined" to

---

[11] The Council's invitation was accepted by the following jurists: Adatci, Japan; Altamira, Spain; Descamps, Belgium; Fernandes, Brazil; Hagerup, Norway; de Lapradelle, France; Loder, Netherlands; Phillimore, Great Britain; Ricci-Busatti, Italy; Root, United States. Dr. James Brown Scott assisted at the meetings of the Committee, as legal adviser to Mr. Root.

[12] The draft scheme framed by a conference of the representatives of Denmark, Netherlands, Norway, Sweden, and Switzerland was a notable contribution to the work of the Committee of Jurists. See DOCUMENTS PRESENTED TO THE COMMITTEE OF JURISTS, p. 301.

[13] The Committee held thirty-five meetings, 16 June–24 July, 1920. The *procès-verbaux* have now been published by the League of Nations Secretariat. The draft scheme of the Committee of Jurists was published in 14 AM. JOUR. OF INT. L., Supp., p. 371.

[14] At the eighth session at San Sebastian, 5 August, 1920, and at the tenth session at Brussels, 27 October, 1920. See LEAGUE OF NATIONS OFF. JOUR., September, 1920, p. 318; *Ibid.*, November-December, 1920, p. 12.

[15] The sub-committee consisted of: Adatci, Japan; Doherty, Canada; Fernandes, Brazil; Fromageot, France; Hagerup, Norway; Hurst, British Empire; Huber, Switzerland; Loder, Netherlands; Politis, Greece; Ricci-Busatti, Italy.

[16] The *procès-verbaux* of the ten meetings of the committee, 17 November–16 December, 1920, are published in RECORDS OF THE FIRST ASSEMBLY, Meetings of Committees, I, pp. 275–329. The *procès-verbaux* of the eleven meetings of the sub-committee, 24 November–10 December, 1920, are published in *Ibid.*, pp. 333–403.

[17] For tracing the origin of the provisions of the final statute, and for comparing the drafts of the Committee of Jurists, the Council, and the Assembly, see the DOCUMENTS PUBLISHED BY THE LEAGUE OF NATIONS SECRETARIAT, Vol. II, pp. 54–60, 214–221.

the protocol of 16 December, 1920,[18] which was opened to be signed by the members of the League of Nations and the other states named in the annex to the Covenant. The Assembly's resolution provided that "as soon as this protocol has been ratified by the majority of the Members of the League, the Statute of the Court shall come into force." When the second Assembly convened on 5 September, 1921, the protocol had been signed by representatives of forty-two members of the League, and ratified by twenty-nine of them,[19] so that the existence of the court was no longer conditioned by anything except the election of the judges.

Selection of the Judges

The statute of the new court provides for a membership of eleven judges and four deputy judges, elected "regardless of their nationality," possessing the "qualifications required in their respective countries for appointment to the highest judicial offices," or being "jurisconsults of recognized competence in international law." The difficulty of determining how they should be elected, which wrecked the attempts to establish the Court of Arbitral Justice at the second Hague Conference, was met by an ingenious suggestion made by Mr. Root to the Committee of Jurists at The Hague.[20] Inspired by the success of the framers of the Constitution of the United States in dealing with the principle of equality of states, Mr. Root suggested that the Assembly and Council of the League might collaborate in the election of judges, who would thus become the choice of both large and small states. In accepting the suggestion,[21] the committee proposed that the new court

---

[18] The text of the Assembly resolution is given in Records of the First Assembly, Plenary Meetings, p. 500; and the text of the protocol in *Ibid.*, p. 468.

[19] The following had ratified: Albania, Australia, Austria, Belgium, Brazil, British Empire, Bulgaria, Canada, Czecho-Slovakia, Denmark, France, Greece, Haiti, Holland, India, Italy, Japan, Norway, New Zealand, Poland, Roumania, Serb-Croat-Slovene State, Siam, South Africa, Spain, Sweden, Switzerland, Uruguay, Venezuela. This information is taken from the League of Nations Off. Jour., October, 1921, p. 809. The ratifications of China, Cuba, and Portugal were later announced to the second assembly. Jour. of the Second Assembly, pp. 93, 278, 303.

[20] See the procès-verbaux of the Committee of Jurists, p. 109.

[21] A member of the League may participate in the election of judges though it has not signed or ratified the protocol establishing the court.

The new states which have been set up since 1907 — Czecho-Slovakia and Poland — and which are not represented on the Permanent Court of Arbitration, will

should be linked with the Permanent Court of Arbitration by giving to the national groups in the latter the function of nominating the persons from among whom the judges should be chosen by the Assembly and Council acting independently. The world had made some progress since 1907 and the existence of the two political bodies of the League of Nations thus made it possible to advance the organization of judicial machinery.

But it still remained to be seen whether the elaborate scheme adopted for electing the judges would work in practice. The list of nominees as presented to the second Assembly included the names of eighty-nine persons, of whom four formally declined to be considered as candidates for election. On 14 September, 1921, the Assembly and Council proceeded to the election with representatives of forty-two members of the League participating. The Assembly's list of eleven judges was completed in five ballots, and comparison with the Council's first list revealed that the two lists had nine names in common. A sixth ballot in the Assembly and a comparison of second lists resulted in the choice of two more judges. After three more ballots in the Assembly and a comparison of third lists, three of the deputy judges were chosen. The Assembly and Council then entrusted the selection of a fourth deputy judge to a joint conference committee as provided by the court statute (Art. 12), whose choice was at once accepted by both bodies.[22] So that the first election, completed within three days, resulted in the selection of the following judges to serve for a term of nine years:[23] Altamira (Spain), Anzilotti (Italy), Barboza (Brazil), de Bustamante (Cuba), Finlay (Great Britain), Huber (Switzerland), Loder (Netherlands), Moore (United States), Nyholm (Denmark), Oda (Japan), Weiss (France). The deputy judges selected are: Beichmann (Norway), Negulesco (Roumania), Wang Chung-Hui (China), Yovanovitch (Serb-Croat-Slovene State). All the persons elected accepted immediately, so that the constitution of the court will be completed at its first meeting.

---

participate in the nomination of judges through "national groups appointed for this purpose . . . under the same conditions as those prescribed for members of the Permanent Court of Arbitration."

[22] This account of the election is based upon the JOUR. OF THE SECOND ASSEMBLY, pp. 84–107.

[23] This list is taken from the LEAGUE OF NATIONS OFF. JOUR., October, 1921, Supp., p. 41.

Relation of the New Court to the Hague Tribunals

Like the Court of Arbitral Justice proposed at The Hague in 1907, the new court is not intended to replace the Permanent Court of Arbitration. The statute provides (Art. 1) that it "shall be in addition to the Court of Arbitration organized by the conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement." No attempt has been made to circumscribe the usefulness of the work of the Hague Conferences. The Permanent Court of Arbitration may still have some functions to perform, even though the new court begins its work immediately. The national groups composing the former will serve as nominators of the judges of the new court.[24] All of the states which ratified the Hague Conventions for the Pacific Settlement of International Disputes have not become members of the League of Nations and do not participate therefore in the election of the judges of the new court. Some of them, moreover, have not been invited to sign the protocol establishing the statute of the new court;[25] and of those to which the protocol is open for signature, eight have not signed.[26] It is quite possible that such states will resort to the Permanent Court of Arbitration, rather than seek access to the new court. And even the states which have ratified the protocol may in some instances desire to choose their own arbitrators from the Hague panel, rather than employ the new court with its fixed personnel; so that the continuation of the Permanent Court of

---

[24] But this in itself would hardly be a sufficient reason for continuing the Permanent Court of Arbitration, since the statute of the new court provides that states not represented on it may appoint national groups with the same qualifications to serve as nominators.

[25] Thus the Dominican Republic, Germany, Hungary as a part of Austria-Hungary, Mexico, Russia, and Turkey, which were parties to the Hague Convention, are not members of the League and are not named in the annex to the Covenant. Montenegro was also a party to the Hague Convention, but her independent existence now seems to have come to an end.

[26] Six members of the League had not signed the protocol on 5 September, 1921 — Argentine, Chile, Guatemala, Honduras, Nicaragua, and Peru. Other states, signatories to the Hague Convention and invited to sign the protocol, which have not signed, are Ecuador and the United States of America.

Arbitration was not seriously questioned at any stage in the establishment of the new court. As no conflict between the two is likely to arise, a great serviceability may still lie before the Permanent Court of Arbitration.

The differences are very marked between the old Hague Court of Arbitration and the new Court of Justice. Being only a panel, of course the members of the former never met as a body; the judges of the latter will come together at least once a year. The fact that governments may count upon a session of the new court in June of every year, and upon the constant presence of the court's president at the Hague, may have a great deal to do with their willingness to make use of it. Both the old and the new bodies are called "permanent." The Court of Arbitration is "permanent" in the sense that a panel is always in existence, from which arbitrators may at any time be chosen; the Court of Justice is "permanent" in the sense that eleven definite judges are always ready to sit, without any necessity of their being specially selected after a dispute arises. The difference means more than the saving of time — it may just tip the scales in favor of a willingness to appeal to orderly processes in preference to force. There is great advantage, also, in giving to picked individuals the opportunity and encouragement to grow in judicial experience and capacity. In the seventeen cases before tribunals formed from the Permanent Court of Arbitration,[27] there has been a decided tendency for the same persons to be chosen as arbitrators. For the seventeen arbitrations (three of which may be counted as a single arbitration) only twenty-four persons were employed, out of a total panel of (about) one hundred and thirty-five; two arbitrators acted five times, one acted four times, and three acted three times.[28] In the new court, the eleven judges or some of the four deputies will be sitting in every case. The possibility of building up a continuous and harmonious system of international law, therefore, seems more promising through the new court than through the Permanent Court of Arbitration. The essential advantages of "permanence" have at last been achieved.

---

[27] As listed in the RAPPORT DU CONSEIL ADMINISTRATIF DE LA COUR PERMANENTE D'ARBITRAGE, 1920, p. 37.

[28] See DOCUMENTS PRESENTED TO THE COMMITTEE OF JURISTS AT THE HAGUE, p. 35.

Arbitration and Adjudication

The new tribunal differs from the old panel, also, in that it professes to be a Court of Justice and not merely a Court of Arbitration. The distinction between the process of arbitration and that of adjudication has been greatly stressed during the period of propaganda for a new court. It proceeds on the notion that arbitration involves compromise, which seems to mean in some minds adding up the claims on both sides of a dispute and dividing the sum by two; while judicial settlement involves merely the application of definite and certain principles without any accommodation between the parties. The prevalent conceptions of arbitration may be the result, to some extent, of the meaning of the term in private law;[29] but the criticism of some of the awards of tribunals formed from the Permanent Court of Arbitration has also contributed to forming them. A remark of Dr. Lammasch that the North Atlantic Fisheries award "contained elements of a compromise" has been widely quoted, though it was later explained that it was not meant that the award itself was a compromise.[30] The refusal of the arbitrators in the *Pious Fund Case* to recognize a doctrine of prescription in international law has been severely criticized as an instance where compromise prevailed.[31] The award in the *Savarkar Case* has been similarly attacked.[32] But such criticism of the awards of the Hague tribunals is no more severe than the common criticism of domestic courts.[33] Decisions of the latter are frequently denounced as compromises. If compromise involves the splitting of differences, or the bargaining with extraneous matters, it is of course objectionable. In truth, neither international law nor municipal law is a "brooding omnipresence in the sky." Both have to be made. Neither is found full-blown. The process in both cases is one of balancing competing interests —

[29] *Cf.* Cohen, Commercial Arbitration and the Law (1918), pp. 10 *et seq.*

[30] 6 Am. Jour. of Int. L. 178.

[31] Wehberg, Problem of an International Court of Justice, 1918, p. 30.

[32] By Dr. van Hamel in 13 Revue de Droit International (2d ser.), 370, 376.

[33] Mr. William Cullen Dennis, in an able article on "Compromise — the Great Defect of Arbitration," 11 Columbia L. Rev. 493, 501, found six of the Hague awards to be judicial decisions as against three "affected by the spirit of compromise." Mr. Jackson H. Ralston found that members of arbitral tribunals "have always treated international law as a rule of guidance." Ralston, International Arbitral Law and Procedure, 1910, § 127.

more patently so when states are contending parties, as a result of the present condition of international law. Perhaps a sounder distinction could be drawn between arbitration or judicial settlement on the one hand and diplomatic negotiation on the other. There is no inherent quality of lawlessness in arbitration.[34] And whether an international tribunal be called a court of arbitration or a court of justice it will probably travel along very much the same roads to reach its conclusions. Its task does not differ greatly from that of the United States Supreme Court in interpreting the Constitution.[35]

The Hague Convention for the Pacific Settlement of International Disputes declared the object of international arbitration to be the settlement of disputes between states "by judges of their own choice and on the basis of respect for law." [36] The statute of the new court is more explicit. It provides (Art. 38) that the court shall apply

"1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

"2. International custom, as evidence of a general practice accepted as law;

"3. The general principles of law recognized by civilized nations;

"4. . . . judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

This greater explicitness is to be welcomed, though it seems doubtful whether it will make the work of the new court essentially different from that of the Hague tribunals. Some of the latter professed to follow "the principles of international law," [37] and "the principles of international law and the maxims of justice." [38] But

[34] This is apparent in Justice Higgins' articles, "A New Province for Law and Order," 29 HARV. L. REV. 13; 32 *Ibid.*, 189; 34 *Ibid.*, 105.

[35] As described in Mr. Felix Frankfurter's article on "The Constitutional Opinions of Justice Holmes," 29 HARV. L. REV. 683.

[36] Article 15 of the 1899 Convention; Article 37 of the 1907 Convention. Dr. Wehberg's conclusion "that the words of the Hague Convention which speak of a decision 'on the basis of respect for law' must be regarded as a delusion," seems very extreme. See WEHBERG, THE PROBLEM OF AN INTERNATIONAL COURT OF JUSTICE, 1918, p. 39.

[37] The Pious Fund Case, WILSON'S HAGUE ARBITRATION CASES, p. 9.

[38] The Preferential Claims Case (Venezuela), WILSON'S HAGUE ARBITRATION CASES, p. 36.

if the provision in the Hague convention that disputes are to be settled "on the basis of respect for law" does not differ substantially from the direction to the new court to apply "the general principles of law recognized by civilized nations," the statute of the latter clearly distinguishes between decisions based on strictly legal grounds and decisions of a generally equitable nature. It provides (Art. 38) that the directions to the court as quoted "shall not prejudice the power of the Court to decide a case *ex aequo et bono*,[39] if the parties agree thereto." [40] This relaxation must mean that with the consent of the parties the court may consciously legislate *ad hoc* to settle a particular case, may apply its general notions of equity and justice. It furnishes some basis for saying that the new court has been invested with extra-judicial functions.[41]

What Law Will the New Court Apply

The body of conventional law which may be applied by the new court has grown very rapidly since the end of the war. The peace treaties and their numerous supplementary agreements are in themselves very extensive. The creation of the new states and other changes wrought by the war have necessitated the revision of many of the pre-war treaties of a general nature, and with the establishment of the League of Nations and the annual meetings of the Assembly it seems probable that more effort will be given to keeping the general treaties up to date. The output of the International

[39] "The Roman conception involved in *aequum et bonum* or *aequitas* is identical with what we mean by 'reasonable,' or very nearly so." Pollock, Expansion of the Common Law, p. 111. *Cf.* Voight, Jus Naturale, Aequum et Bonum Und Jus Gentium der Römer (1856); Ralston, International Arbitral Law and Procedure (1910), § 128.

[40] This part of Article 38 was framed by the sub-commission of the third committee of the first Assembly, 7 December, 1920. M. Politis (Greece) had proposed that the court should apply "the general principles of law and with the consent of the parties, the general principles of justice recognized by civilized nations." The *procès-verbal* states that "after some discussion, M. Fromageot (France) proposed to meet M. Politis' point by adding the provision in question." See Records of the First Assembly, Meetings of Committees, I, p. 403.

[41] This view is strengthened also by the peculiar wording of Articles 12, 13, and 15 of the Covenant, which though they distinguish between arbitration and inquiry by the Council or Assembly of the League, fail to distinguish between arbitration before special tribunals and adjudication before the Permanent Court of International Justice. The second Assembly has promulgated amendments which if ratified will clarify these articles of the Covenant. See League of Nations Off. Jour., October, 1921, Spec. Supp., No. 6, pp. 13–14.

Labor Conference and other technical organizations of the League promises to be very large.

The end of the war has been followed also by a revival of interest in the codification of international law. The preamble to the Covenant of the League of Nations envisages "the firm establishment of the understandings of international law as the actual rule of conduct among Governments," and it has increased the desire that these understandings be more clearly formulated. The Committee of Jurists which drafted the court statute expressed a *voeu* that a new interstate conference should be called, to carry on the work of the Hague Conferences of 1899 and 1907, in formulating and re-establishing and clarifying international law.[42] But the suggestion met considerable opposition. Lord Robert Cecil declared that we have not "arrived at sufficient calmness of the public mind to undertake that [codification] without very serious results to the future of international law," and this view prevailed in the first Assembly of the League of Nations.[43]

Since the judges of the new court are to write reasoned opinions, the decisions themselves should furnish in time a body of international law which the court may apply. Perhaps this will prove to be the greatest advantage of having a permanent international judiciary, instead of arbitrators chosen *ad hoc*. The same persons sitting as judges in a number of cases must of necessity rely to some extent on their opinions as expressed in previous decisions. They will doubtless do so, even though they may deny that the court's decisions are formally binding as precedents.[44] The framers of the statute were careful to provide (Art. 59) that "the decision of the Court has no binding force except between the parties and in respect of that particular case." [45] This seems to involve more than a statement of the Anglo-American principle of *res judicata*. It seems to forbid the court's adoption of the alleged practice of the English House of Lords, that previous decisions will not be over-

---

[42] PROCÈS-VERBAUX OF THE COMMITTEE OF JURISTS, p. 747.

[43] RECORDS OF FIRST ASSEMBLY, Plenary Meetings, p. 745.

[44] Though the French Code forbids judges "to decide a case by holding that it was governed by a previous decision," many jurists now admit that the provision has failed of effect. POUND, SPIRIT OF THE COMMON LAW (1921), p. 180.

[45] This provision originated in the Council though it had been implicit in the original draft of the Committee of Jurists. See DOCUMENTS, II, p. 50.

ruled.[46] But it would not seem to preclude the court's following the Anglo-American doctrine of *stare decisis*[47] and giving to its decisions the force as precedents which will weave them into a body of case law. The object of the framers of this clause was to obviate the necessity of a third state's intervening whenever its interests might be involved in a case.[48] *Res judicata* takes care of such cases; and the statute itself provides (Arts. 62–63) for the intervention of a state which "has an interest of a legal nature which may be affected" by a decision, or which is a party to a convention which is being construed by the court. But whatever the effect of the statute with reference to *stare decisis* as a legal doctrine, the psychological fact of *stare decisis* — the tendency of the same men's minds to follow the same paths to the same conclusions — should insure that the court will make a great contribution to the international law of the future.

Another factor in determining whether the court's decisions will gradually build up a new body of international law may be the nationality of its judges. In the tribunals formed from the Permanent Court of Arbitration, nationals of disputant states were named as arbitrators in eleven out of seventeen cases — ten out of twenty-nine arbitrators were such nationals. As the Convention for the Pacific Settlement of International Disputes provides (Art. 45) that only one of the two arbitrators named by a disputant state may be a national, it is practically impossible for more than two of the five members of a tribunal to be nationals of the parties. In the new court (Art. 31), "judges of the nationality of each contesting party shall retain their right to sit in the case before the Court," and a litigant state whose nationality is not possessed by any of the judges may choose a special judge to sit on its case. This provision undoubtedly detracts from the formally impartial character of the court. But as its decisions may be rendered by a majority vote and as not more than two judges of thirteen (possibly nine) will usually be nationals of contesting states,[49] it seems improbable that the court's decisions will lose any

[46] London Street Tramways Co. *v.* London County Council, [1898] A. C. 375.

[47] On *stare decisis* in international arbitration, see RALSTON, INTERNATIONAL ARBITRAL LAW AND PROCEDURE (1910), pp. iii, 74.

[48] See DOCUMENTS, II, p. 50.

[49] If more than two states are parties, and if all have nationals among the judges the proportion may be larger. Article 31 of the statute is not clear on this point.

impartiality for this reason. Moreover, the judges are elected in such a way as to be quite independent of their own governments. There is some advantage, too, in having on the court nationals from states whose systems of law may be unfamiliar to some of the judges, especially when such states are parties before the court.[50] At any rate, the new court is an improvement on the Hague tribunals which were likely to be more largely composed of nationals, and its decisions ought to contribute more effectively to the development of international law.

The Jurisdiction of the New Court

The Permanent Court of International Justice is to be quite strictly an interstate tribunal. It will be open only to states, and to other political units such as the British Dominions which have achieved membership in the League of Nations. No suits by individuals will be entertained;[51] recent efforts to make it possible for individual representatives of racial, religious, or linguistic minorities to hale an oppressing government before the court have failed. Nor will the court necessarily be open to all states. A state not a member of the League of Nations and not named in the annex to the Covenant, *e. g.*, the Dominican Republic, Germany, Hungary, Mexico, Russia, and Turkey, can have access to the court as plaintiff only on the conditions which may be laid down by the Council of the League; but these conditions are not to be such as would "place the parties in a position of inequality before the Court" (Art. 35). The limitation does not preclude the court's being, in reality as well as in name, a world tribunal.

More difficulty was encountered by the framers of the statute in determining the conditions on which the court might exercise jurisdiction over defendant states. In the popular consideration of the plans in America, the question of so-called "compulsory jurisdiction" has been much discussed.[52] In the original draft, the Committee of Jurists suggested that the court should have jurisdic-

[50] The electors are directed by the statute (Art. 9) to bear in mind that the whole body of judges "should represent the main forms of civilization and the principal legal systems of the world."

[51] The experience which led to the eleventh amendment to the Constitution of the United States may be thought to furnish some justification for this limitation.

[52] See Annals, Am. Acad. of Pol. and Soc. Science, for July, 1921, pp. 98–137.

tion, as between members of the League of Nations, of all "cases of a legal nature, concerning (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature and extent of reparation to be made for the breach of an international obligation; (e) the interpretation of a sentence passed by the Court." And the committee proposed that it should be left to the court itself to decide whether a certain case fell within these categories. Such a large competence would have constituted a very wide departure from the Hague system, or even from the Court of Arbitral Justice proposed in 1907. Opposition to the proposals developed in many quarters, and the Council of the League seized upon the phraseology of Article 14 of the Covenant as necessitating their rejection.[53] The Assembly decided that the basis of the court's jurisdiction should be an agreement between the parties submitting the dispute,[54] but it included in the final statute (Art. 36) provision for an optional clause in the protocol by signing which states may declare that they "recognize as compulsory, *ipso facto* and without special agreement" the jurisdiction of the court as outlined by the Committee of Jurists. This declaration may be made "unconditionally or on condition of reciprocity," or "for a certain time," and it need not be made at the time of signing the protocol. Such a declaration has been made by eighteen states, apparently "on condition of reciprocity" in each case.[55]

The court may also have "compulsory jurisdiction" conferred upon it by treaty, or it may be utilized under existing treaties providing for compulsory arbitration, such as the Danish-Italian treaty of 1905.[56] In a number of the recent treaties, provision has

[53] Article 14 of the Covenant provides that "the Court shall be competent to hear and determine any dispute of an international character *which the parties thereto submit to it.*" The Council also relied on the doubtful use of the word "arbitration" in Articles 12, 13, and 15. See DOCUMENTS, II, p. 47.

[54] Professor de Lapradelle's report for the Committee of Jurists states: "There is an immutable law, in the evolution of legal institutions, which shows that an optional jurisdiction has always sooner or later been followed by a definite compulsory jurisdiction." PROCÈS-VERBAUX OF THE COMMITTEE OF JURISTS, p. 694.

[55] LEAGUE OF NATIONS, MONTHLY SUMMARY, November, 1921, p. 159. The texts of some of the declarations are published in a memorandum by the Secretary-General. LEAGUE OF NATIONS OFF. JOUR., October, 1921, pp. 808–809.

[56] 99 BRITISH AND FOREIGN STATE PAPERS, 1035.

been made for the obligatory reference of disputes to the court. Thus the peace treaties with Germany, Austria, Hungary, and Bulgaria confer on the new court jurisdiction with reference to the ports, waterways, and railways clauses and the enforcement of international labor conventions, and the peace treaties with Austria, Hungary, and Bulgaria give it jurisdiction with reference to the protection of racial, religious, and linguistic minorities.[57] This jurisdiction is obligatory as to all the signatories of the peace treaties. The special treaties for the protection of minorities, concluded by the Principal Allied and Associated Powers with Czecho-Slovakia, Greece, Jugo-Slavia, Poland, and Roumania, and by the Principal Allied Powers with Armenia, give the court obligatory jurisdiction,[58] also, and may become the basis on which it will build extensively. The Convention on Liquors in Africa (Art. 8), the Convention Revising the Berlin Act (Art. 12), and the Arms Traffic Convention of St. Germain (Art. 34), all dated 10 September, 1919, refer to tribunals of arbitration which may be the Permanent Court of International Justice. The statute annexed to the Convention on Freedom of Transit (Art. 13) and the statute annexed to the Convention on Navigable Waterways (Art. 22), both of which were promulgated by the Barcelona Conference on Communications and Transit, confer obligatory jurisdiction on the court. Altogether, the field in which the court may function without the special *ad hoc* consent of the defendant may be very large.

What Will the New Court Have to Do

Speculation as to the amount of business which will come before the court during its earlier years is, however, a very different

[57] Treaty of Versailles, Arts. 336, 337, 386, 415–420, 423; Treaty of St. Germain, Arts. 69, 297, 298, 327, 360–365, 368; Treaty of Trianon, Arts. 60, 281, 282, 310, 343–348, 351; Treaty of Neuilly, Arts. 57, 225, 226, 277–282. Corresponding articles are included in the unratified Treaty of Sevres, Arts. 346, 402–407, 416. Some of the articles dealing with ports, waterways, and railways, refer to a "tribunal instituted by the League of Nations" which might not be the Permanent Court of International Justice. But the court statute provides (Art. 37) that "when a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal."

[58] The Polish Minority Treaty of 28 June, 1919, which is the model on which the others were drafted, provides (Art. 12):

"Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Princi-

matter. When the Central American Court of Justice was inaugurated, the United States Commissioner stated that "an entire absence of business for the court would be the highest justification for its creation." [59] In the present state of the world, perhaps few persons would take the same view of this new court. Yet it may be months, or even years, before any contested cases are brought before it. When the United States Supreme Court first met in February, 1790, it had no business to transact except the reading of the five justices' commissions and the promulgation of four simple rules of procedure; it met again in August, 1790, and again in February, 1791, without business of any kind. In August, 1791, and February, 1792, three motions were heard and one was granted. Not until August, 1792, did it have a contested case; and the first important case, *Chisholm* v. *Georgia*, did not arise until February, 1793.[60] So, also, the Permanent Court of Arbitration, organized in 1900, was not utilized until the *Pious Fund Case* between the United States and Mexico was referred to it in 1902. Similarly, the new Permanent Court of International Justice may not be presented with a crowded docket for some time to come.

But it may at any time be called upon to give an advisory opinion to the Assembly or Council of the League. So many questions are arising before these bodies that some such activity for the court seems quite probable. If the court had been in existence, it would undoubtedly have been used in the dispute between Finland and Sweden concerning the Aaland Islands. Finland maintained that the dispute arose out of a matter which by international law was solely within her domestic jurisdiction. The Council found it necessary to set up a special commission of jurists to deal with the question, declaring that it "would have been placed . . . before the Permanent Court of International Justice for its advisory

---

pal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant."

[59] William I. Buchanan, in UNITED STATES FOREIGN RELATIONS (1908), p. 247.

[60] The record of the early terms of the United States Supreme Court is in 2 Dall (U. S.), 399 ff.

opinion, had that body already been established." [61] In June, 1921, when the Council was asked to pass upon the competence of the courts of the Free City of Danzig in the case of *Puffel* v. *Deutsche Bauern Bank*,[62] the assistance of the court might have been sought, also. And the second Assembly might have asked for the opinion of the court on the question of the Assembly's competence to revise the Peace Treaty of 1904 between Bolivia and Chile, instead of referring the question to a special jurists' committee.[63] These three cases indicate a possible usefulness for the court in the task of completing the organization of the League, as well as in the functioning of its political bodies.

Though numerous legal questions are continually arising in connection with the execution of the treaties of peace, the signatories have shown a disposition to effect practical arrangements which obviate the necessity for court interpretation and adjudication. But it will doubtless become more difficult to effect such arrangements as the control of the Allied Powers diminishes, and as time goes on, the aid of the court may be sought in the construction of the voluminous treaties. In its first meetings, the agenda of the court may be confined, however, to the election of a president and a registrar; to the preparation of a list determining the order in which the deputy judges will be called upon; to the appointment of special "chambers" or divisions for summary procedure, for labor questions, and for questions relating to transit and communications; and to the promulgation of rules of procedure.

Procedure in the New Court

When a case comes before the court, at least nine judges must sit, and there will usually be eleven or more. The French and English languages will be used, and the court may at the request of the parties authorize the use of some other language.[64] The

[61] League of Nations Off. Jour., July-August, 1920, p. 249.

[62] League of Nations Off. Jour., September, 1921, p. 669.

[63] Jour. of the Second Assembly, 27 September, 1921, p. 218.

[64] On the use of languages in the Hague tribunals, see Dennis, "The Orinoco Steamship Company Case," 5 Am. Jour. of Int. L. 35, 59. *Cf.* also Ralston, International Arbitral Law and Procedure, § 280.

The French and English texts of the court protocol are both authentic; this provision in the protocol presumably applies also to the French and English texts of the statute.

procedure, so far as it is prescribed by the statute, follows in broad outline the procedure before the Hague tribunals. It will consist of written "cases, and counter-cases, and if necessary replies;" [65] and an oral hearing of witnesses, experts, agents, counsel, and advocates.[66] Service of notice on individuals in any country may be effected through the government of that country. The hearing will be opened to the public unless the court decides or the parties demand that it be private. In line with current conceptions of court procedure in England and America,[67] it is left to the court itself to promulgate its rules of pleading, practice, and evidence. It is a great advantage that these rules may be laid down and known in advance; the *ad hoc* procedure before the Hague tribunals had to be established either in the *compromis* or after the reference of the case, with the frequent result pointed out by Mr. Dennis that "when the parties actually face one another across the counsel-table at The Hague, everything is chaotic so far as procedure is concerned." [68] The court has power to order a discovery. It may avail itself of the assistance of experts. It may conduct an inquiry through agents of its own selection; when it is considering questions concerning labor or transit and communications, "assessors" will sit with the judges, but without power to vote. The decisions of the court will be taken by a majority of the judges sitting, and a judge who dissents from a judgment in whole or in part may deliver a separate opinion. Pending a final decision, the court may indicate "provisional measures which ought to be taken to reserve [69] the respective rights of either party," though this would

[65] On the meaning of similar provisions in the Hague Convention, see Dennis, "The Necessity for an International Code of Arbitral Procedure," 7 AM. JOUR. OF INT. L. 285, 290; RALSTON, INTERNATIONAL ARBITRAL LAW AND PROCEDURE, § 273.

[66] The provision for hearing witnesses was not explicit in the Hague Convention.

[67] See Hudson, "The Proposed Control of Procedure by Rules of Court in Missouri," 13 LAW SERIES, MISSOURI BULL. 5.

[68] Dennis, "The Necessity for an International Code of Arbitral Procedure," 7 AM. JOUR. OF INT. L. 285, 292.

[69] This word was "preserve" in the original draft of the Committee of Jurists — see the PROCÈS-VERBAUX, p. 681; and in the sub-committee's report to the third committee of the First Assembly — see RECORDS OF THE FIRST ASSEMBLY, Meetings of Committees, I, p. 545. Nor was a change in wording discussed when the article was adopted by the third committee. *Ibid.*, p. 307. So that the change in the third committee's report to the First Assembly may have originated in a typographical slip. *Ibid.*, p. 576. This conclusion is fortified by the fact that the word was "preserve" in the Bryan treaties, from which the provision is taken. See the Treaty between the United

seem to stop short of power to issue an *interim* injunction.[70] The provision for default judgments against states which fail to appear or defend, will hardly be invoked except in the instances of obligatory jurisdiction.

The statute fails to make any provision for the enforcement of either *interim* or final judgments, and the only "sanctions" behind the court are those contained in the Covenant; [71] and if any state should fail to abide by a decision, it will be for the Council of the League to "propose what steps should be taken to give effect thereto." Like the Supreme Court of the United States, the Permanent Court of International Justice may depend for its authority in the last analysis upon the political bodies with which it is affiliated.

International Justice According to Law

The task of creating machinery for dealing with disputes with which the world has been so occupied now for a generation seems to have been performed, for the time being. The existing machinery now seems fairly adequate. For disputes of a juridical nature, we have, in addition to the special arbitral tribunals which states may set up as occasion arises, the Permanent Court of Arbitration with its achievement of successful functioning in seventeen instances, and the Permanent Court of International Justice with its permanent, professional judges, paid adequate salaries,[72] ready to devote "their entire time to the trial and decision of international causes

States and Sweden of 13 October, 1914, 38 STAT. AT L., 1872; RECORDS OF THE FIRST ASSEMBLY, Meetings of Committees, I, p. 368; PROCÈS-VERBAUX OF THE COMMITTEE OF JURISTS, p. 735. The French text of the statute reads: "*mesures conservatoires du droit de chacun doivent être prises à titre provisoire.*"

[70] Interlocutory decrees were issued by the Central American Court of Justice. See 2 AM. JOUR. OF INT. L. 838.

[71] It has been generally admitted that a decision of the court is an "award" which the members of the League agree in Article 13 of the Covenant to "carry out in full good faith." See RECORDS OF THE ASSEMBLY, Plenary Meetings, p. 491. The Minority treaties expressly provide that the decisions of the court "shall have the same force and effect as an award under Article 13 of the Covenant." See Treaty of St. Germain, Art. 69. The Second Assembly has promulgated an amendment to the Covenant which if adopted will leave no doubt on this point. See LEAGUE OF NATIONS, OFF. JOUR., October, 1921, Supp., p. 13.

[72] Salaries and other court expenses are to be borne by the League of Nations. Costs of litigation are to be borne by the parties.

by judicial methods and under a sense of judicial responsibility."[73] For disputes of a political nature, fifty-one peoples have agreed to have resort to the Council or Assembly of the League of Nations before going to war.[74] Machinery itself is important. If there is such a thing in political science as a useful invention — the establishment of the United States Supreme Court and the rôle played by Lord Durham's report in the development of the British Empire encourage the belief that political science is not unlike physical science in this respect — the builders of the new court would seem to have made a valuable contribution to the integration of international society.

But machinery and the intelligent use of it will not insure the world against departures from justice according to law. The will for peaceful adjustment is needed, and its creation depends upon the deeper mainsprings of national life.

Manley O. Hudson.

THE HARVARD LAW SCHOOL.

(APPENDIX)

Statute of the Permanent Court of International Justice[75]

ARTICLE 1. A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organised by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I

ORGANISATION OF THE COURT

ART. 2. The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their

[73] See Secretary Root's Instructions to the American Delegates to The Hague Conference of 1907, 2 SCOTT, HAGUE CONFERENCES, p. 191.

[74] The Treaty of Washington of 13 December, 1921, contains an additional provision for conferences to consider disputes as to the Pacific insular possessions of the signatories.

[75] This English text is reprinted from RECORDS OF THE FIRST ASSEMBLY, Plenary Meetings, p. 468. The French text is also authentic.

nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law.

ART. 3. The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.

ART. 4. The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

ART. 5. At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

ART. 6. Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

ART. 7. The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.

ART. 8. The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.

ART. 9. At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilisation and the principal legal systems of the world.

ART. 10. Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

ART. 11. If, after the first meeting held for the purpose of the election one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

ART. 12. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint Conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

ART. 13. The members of the Court shall be elected for nine years. They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

ART. 14. Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

ART. 15. Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age.

ART. 16. The ordinary members of the Court may not exercise any

political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

ART. 17. No member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a Commission of enquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

ART. 18. A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations, by the Registrar.

This notification makes the place vacant.

ART. 19. The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

ART. 20. Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

ART. 21. The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

ART. 22. The seat of the Court shall be established at the Hague.

The President and Registrar shall reside at the seat of the Court.

ART. 23. A session of the Court shall be held every year.

Unless otherwise provided by rules of Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

ART. 24. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

ART. 25. The full Court shall sit except when it is expressly provided otherwise.

If eleven judges cannot be present, the number shall be made up by calling on deputy-judges to sit.

If however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

ART. 26. Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

ART. 27. Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties

of Peace shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications cases" composed of two persons nominated by each member of the League of Nations.

ART. 28. The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at the Hague.

ART. 29. With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

ART. 30. The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

ART. 31. Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

ART. 32. The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-President, judges and deputy-judges, shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

ART. 33. The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II

COMPETENCE OF THE COURT

ART. 34. Only States or Members of the League of Nations can be parties in cases before the Court.

ART. 35. The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court.

ART. 36. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognise as compulsory, *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a Treaty;

(*b*) Any question of International Law;

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

ART. 37. When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

ART. 38. The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

2. International custom, as evidence of a general practice accepted as law;

3. The general principles of law recognised by civilised nations;

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

CHAPTER III

PROCEDURE

ART. 39. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers;

the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorise a language other than French or English to be used.

ART. 40. Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

ART. 41. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

ART. 42. The parties shall be represented by agents.

They may have the assistance of counsel or advocates before the Court.

ART. 43. The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

ART. 44. For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

ART. 45. The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

ART. 46. The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

ART. 47. Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

ART. 48. The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

ART. 49. The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

ART. 50. The Court may, at any time, entrust any individual, body, bureau, commission or other organisation that it may select, with the task of carrying out an enquiry or giving an expert opinion.

ART. 51. During the hearing, any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

ART. 52. After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

ART. 53. Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favour of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

ART. 54. When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

ART. 55. All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

ART. 56. The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

ART. 57. If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

ART. 58. The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

ART. 59. The decision of the Court has no binding force except between the parties and in respect of that particular case.

ART. 60. The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

ART. 61. An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

ART. 62. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party. It will be for the Court to decide upon this request.

ART. 63. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

ART. 64. Unless otherwise decided by the Court, each party shall bear its own costs.